Citation: *R.* v. *T.D.J.F.P.*, 2010 YKYC 3

Date: 20101206
Docket: Y.C. 10-03502
Registry: Whitehorse

IN THE YOUTH JUSTICE COURT OF YUKON
Before: His Honour Judge Faulkner

REGINA

v.

T.D.J.F.P.

Publication of identifying information is prohibited by s. 110(1) and 111(1) of the *Youth Criminal Justice Act*.

Appearances:
Judith Bielefeld — Counsel for the Crown
Emily Hill — Counsel for the Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): This is an application pursuant to s. 486.2(1) of the *Criminal Code* for an order that a witness, who is under the age of 18, testify from outside of the courtroom by closed circuit television.

[2] The respondent, T.P., is charged with sexual assault. The witness in question is the complainant. It is conceded that she is presently 15 years of age and was 14 at the time, and that the allegations involve sexual intercourse between the accused and the complainant.

[3] It should further be noted that the respondent, T.P., now 17, was 16 at the time of the incidents that give rise to the charges before the Court.

[4] Under s. 486.2(1), I think the intention of Parliament is clear and unambiguous. If there is an application by the prosecutor and the witness is either under the age of 18 or subject to a mental or physical disability, the order to allow the witness to testify from outside of the courtroom or from behind a screen is to be granted, unless it is shown that there would be an interference with the proper administration of justice. I say "shown," although the section itself says, "the judge is of the opinion," but in order for the Court to come to such an opinion, there has to be some basis shown and therefore, in my view, there is some evidentiary burden upon the respondent.

[5] In my view, that burden goes beyond simply alleging, baldly, that an accused has a right to confront his accuser. I say that for two reasons: Firstly, if that was all the accused needed to say, that would simply negate the clear intention of Parliament in enacting this section. Secondly, it is not clear to me that this section actually interferes with this right to confront an accuser in any complete sense, because the accused still has the opportunity to see the complainant, albeit by closed circuit television; he still has the right to cross-examine the complainant; he still has the right to hear what she says in chief.

[6] It was urged on behalf of the respondent that there was some evidentiary burden upon the Crown in bringing such an application, and I agree that there is, in the limited sense that they must show, for example, that the witness is under 18 years of age. If that was not conceded, it would be necessary to lead evidence in that regard. As well, of course, if the Crown does not lead evidence in support of its application, it runs the clear risk that the presumption will be rebutted, since, if the respondent does produce some evidence, the evidence will be all to one side.

[7] With respect of this particular application, the allegation is that the complainant, as I say, is 15, was 14 at the time, and there is an allegation of sexual assault against the accused. That brings the Crown squarely within s. 486.2(1). No evidence was led by the accused in response, and no particular argument made against the granting of the order, other than, as I say, the bare allegation that the accused has the right to confront his accuser.

[8] In those circumstances, it seems to me I am left to apply the plain wording of the section. The order will go.

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FAULKNER T.C.J.